

REMARKS

This Response, filed in reply to the Office Action dated March 17, 2008, and the Advisory Action dated October 7, 2008, is believed to be fully responsive to each point of objection and rejection raised therein. Accordingly, favorable reconsideration on the merits is respectfully requested.

Claims 1 and 4-6 are rejected. Consideration of the remarks herein is respectfully requested.

Claims 1 and 4-6 are Patentable Under 35 U.S.C. § 103

On page 2 of the Office Action, Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0583665 ("EP '665") in view of either Aikawa (7,101,532; "Aikawa '532"), Kitaguchi (7,008,614; "Kitaguchi"), or Schmidt (6,077,529; "Schmidt"), for reasons of record.

On page 3 of the Office Action, Claims 1 and 4-6 are further rejected under 35 U.S.C. §103(a) as being unpatentable over Aikawa (5,387,600; "Aikawa '600") in view of either Aikawa '532, Kitaguchi or Schmidt, for reasons of record.

In addition to the rejections of record, which for brevity are not reiterated herein, the Examiner indicates in the Advisory Action mailed October 7, 2008, that Applicants' previous remarks were not sufficient to place the application in condition for allowance because "Applicant[s are incorrect] in stating that the secondary references do not teach PC and PS in a ratio of 1:1."

Applicants note that even although Aikawa '532 and Kitaguchi appear to disclose a liposome having phosphatidylcholine and phosphatidylserine in a ratio of 1:1, Aikawa '532 and

Kitaguchi are relied upon merely to disclose a process of adding a compound as an active ingredient *after* liposome. Neither Aikawa '532 or Kitaguchi even suggest that simultaneous addition of the active compound at the time of formation of the liposome would result in superior incorporation, as is demonstrated for the claimed benzimidazole compound in the experimental data in the Rule 132 Declaration submitted January 17, 2008. Applicants reiterate that in view of this unexpected result alone, the cited references do not render obvious Applicants' claimed invention.

Further, Applicants note that the arguments set forth on pages 3 and 4 of the Response submitted September 17, 2008, do not appear to have been duly considered, and that such arguments remain relevant even if Aikawa '532 and Kitaguchi disclose a liposome having phosphatidylcholine and phosphatidylserine in a ratio of 1:1. Given the unpredictability of which compounds will incorporate into the membrane of a liposome of a given formulation, and vice versa, Applicants maintain that the cited references do not render obvious that the claimed benzimidazole compounds will incorporate into liposomes having phosphatidylcholine and phosphatidylserine in a ratio of 1:1, much less that simultaneous addition of the claimed benzimidazole at the time of formation of the liposome would result in unexpectedly superior incorporation. It is well-settled that a *prima facie* case of obviousness may be rebutted by a demonstration of unpredicted or unexpected results.

In view of the foregoing, Applicants maintain that the cited references do not render obvious Applicants' claimed invention.

Withdrawal of the rejections is respectfully requested.

RESPONSE UNDER 37 C.F.R. § 1.114(c)
Application No.: 10/670,004

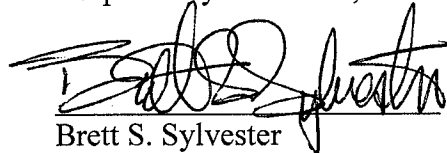
Attorney Docket No.: Q77153

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Brett S. Sylvester
Registration No. 32,765

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: November 17, 2008